

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 156 OF 2006
IN
NOTICE NO. N/258 OF 2004

Rajendra Electrical Industries
Ltd.

...Judgment Creditors.

V/s.

Kaushik R. Gandhi.

... Judgment Debtor.

Mr. P.V. Shah for the Creditors.

Mr. Kishor Jain for the Debtor.

.....

CORAM : DR. D.Y. CHANDRACHUD,J.

28TH SEPTEMBER, 2006.

P.C. :

1. The Motion is being taken out for setting aside an
Insolvency Notice dated 16th October 2004. In the
affidavit in support of the Notice of Motion it has been
stated that the Insolvency Notice was purported to have
been served by substituted service. The Debtor has
submitted that he was not served with the Insolvency
Notice by substituted mode or otherwise. During the
pendency of the proceedings, parties have arrived at
Consent Minutes of the Order under which the Debtor has
furnished a cheque in the amount of Rs.4.00 lacs to the
Petitioning-Debtor. The Consent Terms envisage that upon
the encashment of the cheque, the Notice of Motion shall
stand absolute. In the event, the cheque is dishonoured
and remains unpaid beyond 15th November 2006, the Motion
shall stand dismissed and the Insolvency Petition shall
stand absolute in terms of Prayer Clauses (a) and (b).

2. The Act of Insolvency is alleged to have been complete upon non-compliance with the requisitions contained in the Insolvency Notice.

3. In the circumstances, a failure to serve the Insolvency Notice would go to the root of the question as to whether the act of Insolvency was complete. Having regard to the averments in the affidavit in support of the Notice of Motion, there is no reason why the Consent Terms which have been signed by the parties should not be taken on the record. The Consent Terms are, accordingly, taken on record and marked as "X."

4. There shall be an order in terms of the Consent Minutes of the Order.
